

SPECIAL CIVIL APPLICATION No 2984 of 1999

Hon'ble MR.JUSTICE A.L.DAVE

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KANJIBHAI BHIKHABHAI DAFDA

DISTRICT MAGISTRATE

MR GONDALIA FOR MR. YOGESH S LAKHANI for Petitioner  
MR JOSHI, AGP for Respondent No. 1, 2, 3

Date of decision: 17/11/1999

1. The petitioner herein came to be detained by an order of District Magistrate, Rajkot passed on 11th of January 1999 in exercise of powers under sub-section [2] of section 3 of the Gujarat [Prevention of Anti Social Activities] Act, 1985. The grounds for detention

indicate that the petitioner alongwith certain other persons was involved in grabbing of government land bearing survey No. 215 of Rajkot. The detaining authority, after recording detailed reasons, recorded a subjective satisfaction that there was no other alternative but to detain this person in order to prevent him from land grabbing and disposing of the government land to innocent persons which may ultimately affect the law and order situation.

2. The petitioner was supplied with all necessary documents. He made a representation to the appropriate authority and having failed in it, ultimately preferred this petition under Article 226 of the Constitution of India.

3. The petitioner has raised several grounds to assail the order of detention. The major one being that he has not been supplied legible copies of the documents on which the order of detention was based. It has also been contended that translated version of some of the documents has not been supplied to the petitioner. That the order is contrary to law and against the factual matters on record. The detaining authority and other authorities have not considered the facts and material on record in its correct perspective.

4. Heard Mr. P.S.Gondalia, learned Advocate for the petitioner and Mr. Joshi, learned AGP for the State.

5. Learned AGP has placed on record an affidavit filed by District Magistrate, Rajkot on 24th August 1999 and Mr. Gondalia has placed on record a copy of the representation made by the petitioner dated 4th February 1999.

6. Mr. Gondalia raised multifold contentions which can be briefly stated as under :-

[i] The subjective satisfaction recorded by the detaining authority about the likelihood of breach of public order is not well founded.

[ii] The detaining authority has not considered of availing a less drastic remedy like externment.

[iii] The documents at page 55 and 223 of the compilation supplied to the petitioner by the detaining authority are in English. The petitioner does not know English language and a translated version of these documents into the

language known by the petitioner has not been supplied by the respondents.

[iv] The documents at page 103, 179 and 183 of the compilation of the documents supplied by the detaining authority to the petitioner are completely illegible. This point was raised by the petitioner in his representation and the same is raised in this memo of petition also and despite, according to Mr. Gondalia, no legible copy is supplied, which has caused prejudice to the petitioner.

[v] Lastly, Mr. Gondalia submitted that three persons were detained by the detaining authority in relation to similar transactions. One of the detenues namely Kadavabhai Chanabhai has been released by the Advisory Board under PASA and therefore, the detention of the present petitioner is violative of Article 14.

7. Mr. Joshi, after examining the compilation fairly conceded that the documents at page 103, 179 and 183 are completely illegible. Mr. Joshi could not justify the averments made in the affidavit by the District Magistrate stating, "I further deny that the detenu was not given legible papers. In fact, all documents provided were legible. Page No.11, 103, 149 and 183 are found to be bogus evidence created." The detaining authority in affidavit in reply in para 9 has come with the contention that the say of the petitioner that the documents at page 103, 179 and 183 are not legible, is not tenable at law, because such a ground is not available to the petitioner in the facts and circumstances of the present case. The said document at page No. 103 is a stamp paper produced by Kadava Chanabhai Kakadiya and therefore, it is incumbent upon the petitioner that he knew about such a stamp paper and therefore, no prejudice is caused.

8. With this factual aspect, if the copy of the representation is considered, in para 4, the petitioner has categorically stated that page No. 103, 179, 183, etc. are illegible and therefore, he is not in a position to make any representation against the detention and therefore, he may be supplied legible copy. It is also contended therein that the papers supplied are in English language. That he does not know English language and he is therefore unable to know to what these papers relate and therefore, he may be supplied a translated Gujarati version of these documents.

9. It is therefore factually very clear that almost immediately the petitioner has come with a case that some of the documents are not legible and some of the documents are in a language not understood by him and therefore, he is not in a position to make an effective representation. It seems that the authorities have not dealt with this aspect in the affidavit. It is not the case of respondents in the affidavit that the petitioner had asked for legible copies and that they have been supplied to him. Under the circumstances, the detention would stand vitiated as the right of the petitioner for making an effective representation gets infringed or violated. This view was taken by a Division Bench of this Court in the case of Mulchandbhai Shobhraj Mulvani v/s Secretary, Government of Gujarat and others reported in 1991 [1] GLR 42. Likewise, in 1988 [2] GLR 1336, in the case between Vikramsinh Pravinsinh v/s State of Gujarat and another also, a Division Bench of this Court observed that where a document or some part of it is illegible, there is no communication and the order of detention and continued detention therefore would be vitiated. As regards the contention that no prejudice is caused, it may be noted that petitioner is Kanji Bhikhabhai Dafda and not Kadava Chanabhai Kakadiya who has produced this document. Further, unless the document is legible, there is no communication of the contents and by no stretch of imagination, can it be said that the person receiving that document can be presumed to know the contents of the documents. As rightly conceded by Mr. Joshi in fairness, the documents are not legible at all and therefore, in light of the decisions of this Court, the detention of the petitioner has to be held to have been vitiated. In this view of the matter, the detention of the petitioner gets vitiates and has to be quashed and set aside.

9. At this stage, Mr. Gondalia does not press for any verdict on other grounds advanced by him. Mr. Joshi was at loss to sustain the detention on ground of non-supply of legible copies and the impugned order therefore needs to be quashed and set aside.

10. The petition is therefore allowed. The impugned order of detention passed by the District Magistrate, Rajkot on 11th of January 1999 is hereby set aside with no orders as to costs. The petitioner - Kanjibhai Bhikhabhai Dafda be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly.

[ A.L.DAVE, J. ]

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